

## Message Text

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TAGS: EEC ETRD  
SUBJECT: GOVERNMENT PROCUREMENT

REF: EC BRUSSELS 11522

1. SUMMARY: THE EC COUNCIL OF MINISTERS APPROVED ON DECEMBER 21 THE EC DIRECTIVE ON GOVERNMENT PROCUREMENT WHICH WILL LIBERALIZE SUPPLY CONTRACTS BY OFFICIAL BODIES FOR MOST PRODUCTS AND SERVICES. COMMISSION OFFICIALS FEEL THE ADOPTION OF THE DIRECTIVE MARKS AN IMPORTANT STEP IN THE STRENGTHENING OF THE COMMUNITY. IN THE ANNEX TO THE DIRECTIVE THE COMMISSION POINTS OUT THAT THE DIRECTIVE WILL ALLOW GOVERNMENTS TO DENY BENEFITS OF FREE CIRCULATION OF GOODS AND SERVICES TO PRODUCTS OF NON-EC FIRMS PENDING SUCCESSFUL NEGOTIATIONS FOR RECIPROCAL TREATMENT IN THE OECD. COMMISSION OFFICIALS PREDICT THAT THE EC POSITION AT THESE NEGOTIATIONS WILL BECOME CLEARER AND POSSIBLY TOUGHER. END SUMMARY.

2. THE EC COUNCIL HAS FINALLY ADOPTED A COMMISSION PROPOSAL FOR A DIRECTIVE OPENING UP NATIONAL COMMUNITY MARKETS FOR SUPPLY TO GOVERNMENT BODIES. THIS DIRECTIVE  
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WHICH HAS BEEN BEFORE THE COUNCIL SINCE 1973, IS INTENDED TO OBLIGE PUBLIC BODIES (INCLUDING DECISION MAKING BODIES OF THE EC ITSELF) TO OBSERVE COMMON PROCEDURES IN AWARDING CONTRACTS (ABOVE 200,000 EUA) FOR THE SUPPLY OF CERTAIN TYPES OF GOODS. THIS DIRECTIVE COMPLEMENTS AN EARLIER ONE ADOPTED BY THE COMMISSION

WHICH OPENED UP PUBLIC WORKS CONTRACTS. UNDER THE NEW DIRECTIVE, ADVERTISEMENTS WILL BE PUBLISHED IN THE OFFICIAL JOURNAL. A CONSULTATIVE COMMITTEE WILL OVERSEE THE APPLICATION OF THE DIRECTIVE WHICH, MUST BE INCORPORATED INTO NATIONAL LAW IN MEMBER STATES WITHIN 18 MONTHS OF THE DATE OF ADOPTION BY THE COUNCIL. THE COMMITTEE WILL HANDLE APPEALS BY FIRMS WHICH FEEL THEY HAVE BEEN DISCRIMINATED AGAINST IN THE AWARDED OF A PUBLIC SUPPLY CONTRACT. THE COMMISSION WILL PRESIDE OVER THE COMMITTEE WHICH WILL INCLUDE REPRESENTATIVES FROM NATIONAL GOVERNMENTS.

3. EXCLUDED FROM THE SCOPE OF THE DIRECTIVE ARE PUBLIC SUPPLY CONTRACTS FOR TRANSPORTATION, WATER, ENERGY (PRODUCTION, TRANSPORT, AND DISTRIBUTION), TELECOMMUNICATIONS, AND (UNTIL 1981) DATA PROCESSING.

4. NO PRECISE FIGURES ARE AVAILABLE ON THE TOTAL MONEY SUM OF TRANSACTIONS COVERED BUT IT IS KNOWN THAT IT WILL BE ONLY A PART OF THE TOTAL PUBLIC SUPPLY MARKET WHICH WAS 10 BILLION EUA IN 1972 (EXCLUDING GOODS WHICH ARE SPECIFICALLY MILITARY). THE COMMISSION CLAIMS IT IS USING A WORKING ESTIMATE OF 3.4 BILLION EUA.

4. ALTHOUGH THE DIRECTIVE WOULD THEORETICALLY PERMIT EQUAL BENEFITS TO ANY PRODUCT ADMITTED TO FREE CIRCULATION WITHIN THE COMMUNITY, THE COUNCIL HAS ENDORSED A COMMISSION DECLARATION (ANNEXED TO THE DIRECTIVE) WHICH WILL PERMIT MEMBER STATES TO EXCLUDE, IF THEY WANT TO, PRODUCTS OF NON-EC ORIGIN. THE COMMISSION STATED THAT LIMITED OFFICIAL USE

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UNDER ARTICLE 115 OF THE ROME TREATY (PROTECTIVE MEASURES AGAINST DEFLECTION OF TRADE) IT WILL ALLOW INTERESTED MEMBER STATES TO EXCLUDE CERTAIN PRODUCTS ORIGINATING IN THIRD COUNTRIES BUT CIRCULATING FREELY WITHIN THE EC. THIS EXCLUSION COULD CONTINUE UP TO THE COMPLETION OF INTERNATIONAL NEGOTIATIONS.

5. IN ANOTHER ANNEX TO THE DIRECTIVE, THE COUNCIL ASSERTED ITS DESIRE TO SEE THE PUBLIC TELECOMMUNICATIONS SECTOR BROUGHT UNDER THE LIBERALIZING PROCEDURES OF THE DIRECTIVE. COMMISSION OFFICIALS WHO ARE CHARGED WITH DEVELOPING WITHIN TWO YEARS A TIMETABLE FOR THIS INCLUSION PROTEST THAT THE PROBLEMS INVOLVED ARE INSURMOUNTABLE. IN ADDITION TO THE BASIC POLITICAL PROBLEMS (THE UK AND ITALY DON'T REALLY WANT THE INCLUSION) AND LEGAL PROBLEMS (THE LEGAL STATUS OF THE TELECOMMUNICATIONS SECTOR VARIES FOR MANY COUNTRIES), THERE ARE ALSO TECHNICAL PROBLEMS OF STANDARDIZATION AND BUREAUCRATIC

PROBLEMS FOR THE COMMISSION OF COOPERATING WITH THE EUROPEAN POSTAL AND TELEGRAPHIC UNION, WHICH HAS DONE MUCH OF THE WORK OF COORDINATION TO DATE.

6. WHEN ASKED BY MISSION OFFICER HOW ADOPTION OF DIRECTIVE WOULD AFFECT OECD NEGOTIATIONS, EC OFFICIAL STRUXIANO SAID THAT WHILE DERISBOURG FELT THAT THE COMMUNITY POSITION WOULD REMAIN THE SAME, HE WAS HIMSELF MORE CAUTIOUS. STRUXIANO SAID THAT THOUGH IT WAS POSSIBLE THAT DIRECTIVE COULD SPEED OECD NEGOTIATIONS, THERE WAS A DANGER THAT SOME MEMBER STATES WOULD BE CONTENT WITH JUST THE EC DIRECTIVE. A COMINATION OF PROTECTIONIST SENTIMENT AND A FEELING THAT EUROPEAN FIRMS WERE GENERALLY TOO SMALL TO BENEFIT GREATLY FROM ACCESS TO THE US AND CANADIAN MARKET COULD ENCOURAGE THIS FEELING. HE ALSO SAID US SHOULD NOT NEGLECT SUBJECTIVE ELEMENTS AT PLAY AND HE SINGLED OUT COUDRY AS SUFFERING FROM CHRONIC ANTI-AMERICAN GAULLISM AND LOOKING FOR ANYTHING TO FEED HIS SUSPICIONS LIMITED OFFICIAL USE

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OF THE U.S. THIS FEELING COULD GROW, STRUCIANO SAID, IF MEMBER STATES LEARNED OF CONTENTS OF RECENT USG PUBLICATION ENTITLED PUBLIC PROCUREMENT PRACTICES IN THE US AND OTHER COUNTRIES WHICH HE SAID HIGHLIGHTED THE DIFFICULTIES OF REDUCING RESRICTIVE PRACTICES IN THE US. HE WAS DOING AN INTERNAL COMMISSION ANALYSIS OF THIS DOCUMENT BUT WOULD ADVISE AGAINST SENDING IT TO MEMBER STATES.

7. ON THE OTHER HAND, STRUXIANO SAW THE ADOPTION OF THE DIRECTIVE AS AN OPPORTUNITY TO CUT SHORT MEMBER STATE OBJECTION AT OECD ON SUBSTANTIVE POINTS ALREADY AGREED TO IN EC DIRECTIVE AND ALSO FOR EC TO LAY ITS CARDS DOWN ON THE TABLE IN HOPE OF PRODUCING QUICK RESULTS. WITH THIS IN MIND, HE SAID, DERISBOURG AND HE WERE TENTATIVELY PLANNING TRIP TO US IN SPRING TO MEET WITH POMERANZ AND SEE WHAT COULD BE ACHIEVED AT A POSSIBLE FUTURE OECD SESSION.

8. MISSION IS POUCHING ENGLISH TEXT OF DIRECTIVE TO EUR/RPE BRESLER AND STR POMERANZ.HINTON

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